

The Bagley-Keene Open Meeting Act

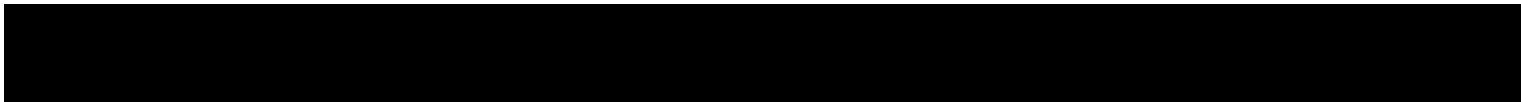
Bagley-Keene Open Meetings Act - Purpose

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When a body sits down to develop its consensus, there needs to be a seat at the table reserved for the public

The legislature has provided the public with the ability to monitor and participate in the decision-making process

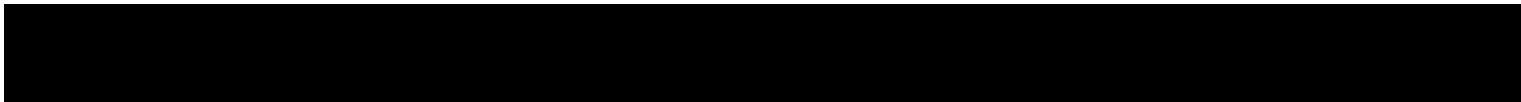
Some efficiency is sacrificed for the benefits of greater public participation in government



All Commission meetings must be open and public

The Commission must provide a notice and agenda to the public for all meetings, and usually 10 days in advance

The Commission must conduct its meetings and make its decisions in public The Commission must allow all persons to attend and participate in its meetings



Who has to comply with the Bagley Keene Act?

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The Commission

Advisory Bodies, if:

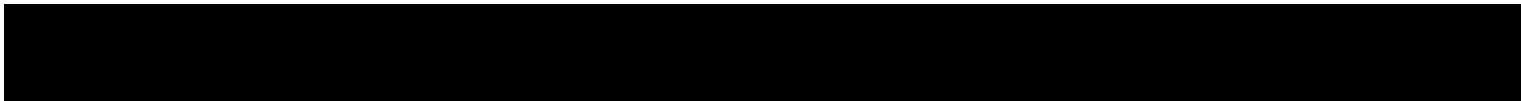
- Created by the Legislature, or
- Created by the Commission or any member of the Commission, and has three or more members

Delegated Body

- If it exercises power that has been delegated by the Commission
- So, Commission normally would not delegate powers to the Executive Committee
- Delegation to individual (President, GC) is okay

New Members

- Even before sworn in!



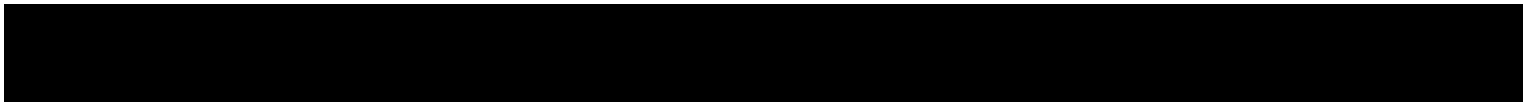
What is a Meeting?

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Any communication among a quorum of the Commission (or committee) On a topic within jurisdiction of the Commission (or committee)

Where the members discuss, debate or deliberate, or

Receive, process and discuss information



What is a Meeting?

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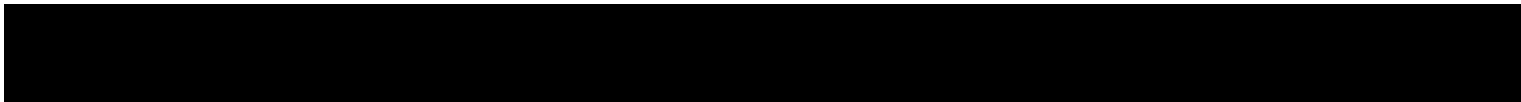
Receive, process and discuss information

- “Study Sessions” not allowed
- “Pre-meeting briefings” not allowed
 - Can accomplish communication and comply with Bagley-Keene by using staff report, which must also be made available to the public

Type of Communication that Leads to a “Meeting”

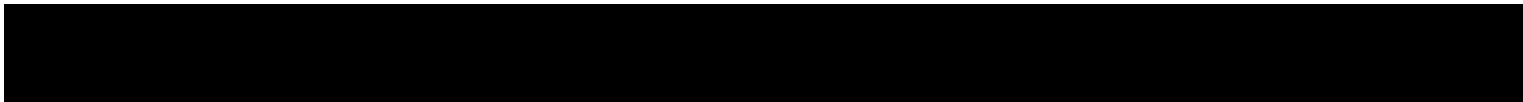
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Clarification of an issue within Commission's
jurisdiction Agreement or compromise
Advance the resolution of an issue
Any aspect of deliberative process



Prior to Commission meeting, Commission has lunch together in near-by restaurant with staff. Problem?

- During lunchtime conversation, Commission members ask questions about agenda items. Problem?



Serial Meetings

What the Commission cannot do as a group, it also cannot do through a series of communications by a majority of the members

Several contacts between Commission members

Each contact involves less than a majority, but when all contacts are added up, involves a majority



Typically telephone conversations and e-mails Can also be

- One-on-one meetings (lunch, coffee, dinner)
- Individual meetings with staff (including with attorneys)

Teleconference and videoconference meetings

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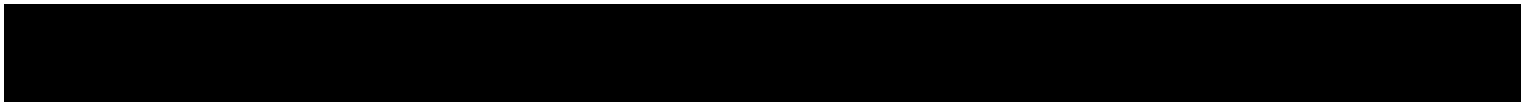
Allowed, as long as each site is accessible to the public, ADA compliant, and public can hear

Sites must be noticed and at least one member of the Commission must be at each location

Agenda must be provided and public allowed to speak from each location

Votes by roll call

So, if Commission member will participate by conference call from home, home must be open to the public, ADA compliant, facility set up for public participation, and agenda posted and available

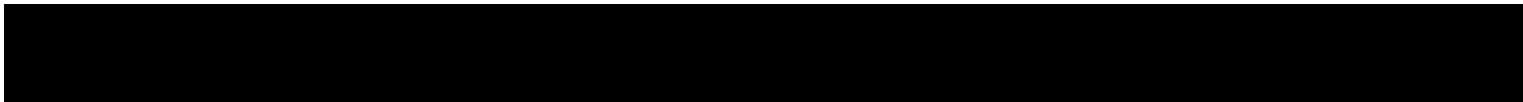


What is Not a Meeting?

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Individual contacts between a Commission member and the public

One way transmission of information from Chair, General Counsel, or staff



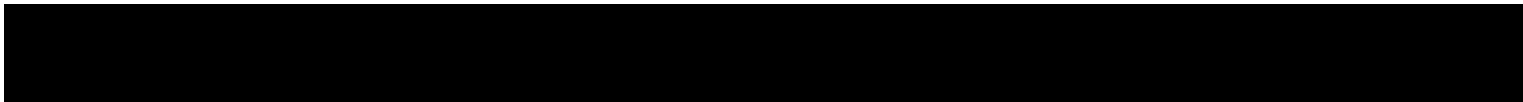
What is Not a Meeting?

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Majority of members at a:

- Conference open to the public and of general interest to persons in a given field
- Local public meeting
- Open meeting of another body
- Social gatherings or ceremonial event

BUT – no shop talk! Cannot discuss Commission matters at these events



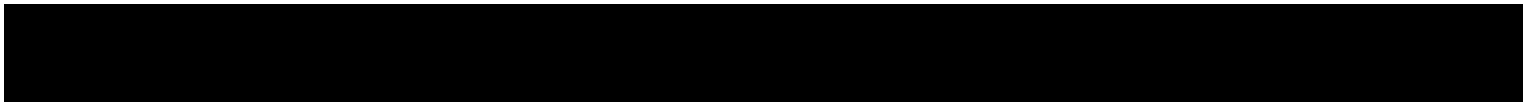
Notice and Agenda Requirements

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Must send to everyone who has requested a copy (there are usually standing requests)

Must be given and also posted on the Internet at least 10 days before a regular meeting

Must state time and place of meeting



Agenda

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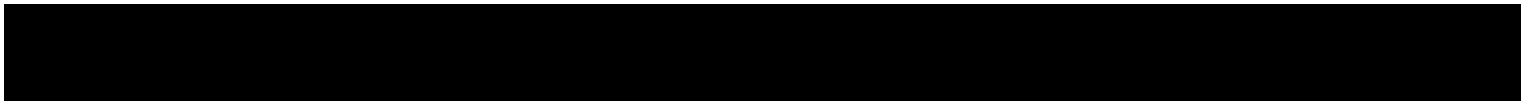
Brief general description (less than 20 words) of each item to be discussed or transacted

- Includes both open session and closed session items (discussed below)

Must provide enough information that public can decide whether to participate

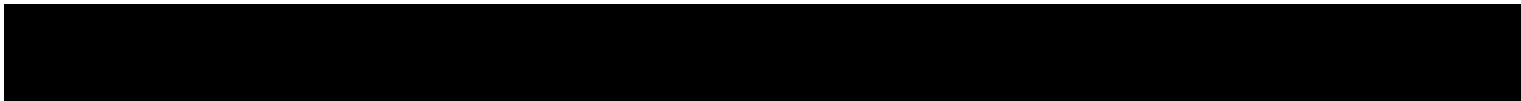
Commission may not discuss or act on matters not included in the agenda

New issues (raised by Commission, staff or public during the meeting) may be included in next meeting's agenda



After agenda is posted, new items may be added to the agenda only where:

- Commission concludes the topic qualifies for an emergency meeting, or
- There is a need for immediate action and the need for action came to the attention of the Commission after the agenda was mailed
 - At the meeting, Commission must make this finding before taking action on the item
 - Action on the item requires a two-thirds vote of the Commission, or unanimous vote if less than two-thirds of the members are present

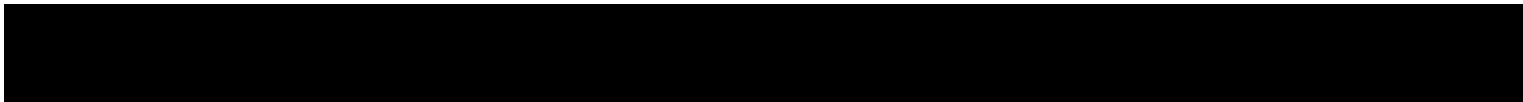


Additions to Agenda

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Notice of the added item must be provided as soon as practicable and at least 48 hours before the meeting:

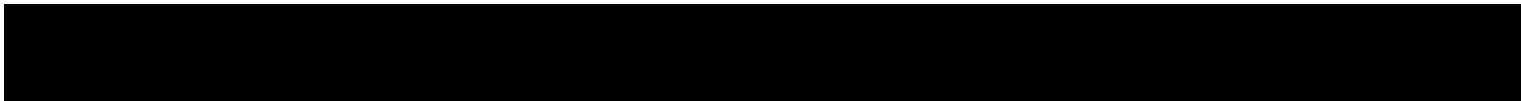
- to each Commission member
- to all parties that have requested notice of the meetings
- to newspapers of general circulation and radio or television stations
- to all national press wire services
- on the Internet as soon as is practicable



Can be called with 48-hours notice by the Chair or by a majority of the members

- If the 10-day notice would impose a substantial hardship on the Commission or if immediate action is required to protect the public interest; and
- For one of these purposes **only**:
 - To provide for an interim executive officer upon the death, incapacity, or vacancy in that office
 - To consider
 - » Pending litigation
 - » Proposed legislation
 - » Issuance of a legal opinion.
 - » Disciplinary action involving officer or employee.
 - » Purchase, sale, exchange, or lease of real property.
 - » To consider a response to a confidential final draft audit from the Bureau of State Audits

No other business can be considered at a special meeting

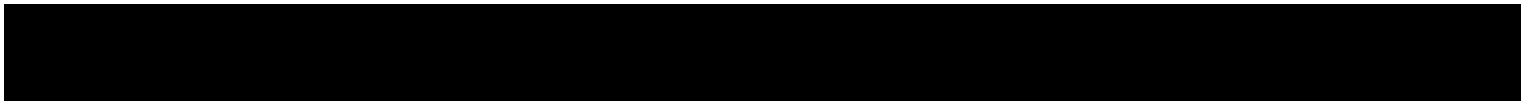


Notice of Special Meeting

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Similar to addition to agenda - notice must be provided:

- as soon as practicable and at least 48 hours before the meeting:
 - to each Commission member (can waive at or before the meeting)
 - to all parties that have requested notice of the meetings
 - to newspapers of general circulation and radio or television stations
 - to all national press wire services
- on the Internet as soon as is practicable



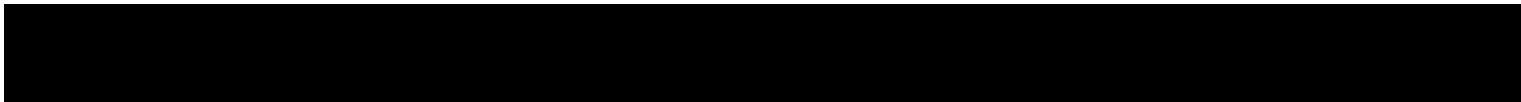
Commission finding for Special Meeting

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Commission must find either that the delay necessitated by providing notice 10 days prior to a meeting would cause a substantial hardship on the Commission, or that immediate action is required to protect the public interest.

- Requires two-thirds vote (six members), or, if less than two-thirds are present, a unanimous vote of those members present.
- If the Commission does not make the finding, the meeting must terminate.

Finding must state the specific facts that constitute the hardship to the body or the impending harm to the public interest.



Emergency meetings

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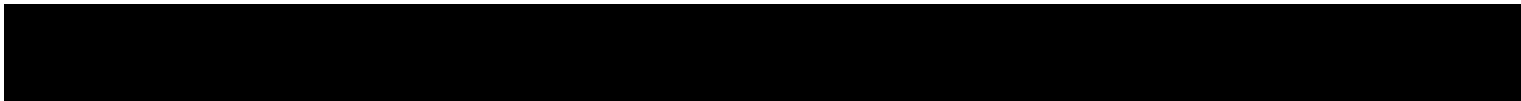
Not used very often

Can be called without the 10-day or 48-hour requirements

Only if there is an “emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities”

“Emergency situation” (as determined by a majority of the members)

- Work stoppage or other activity that severely impairs public health or safety, or both
- Crippling disaster that severely impairs public health or safety, or both



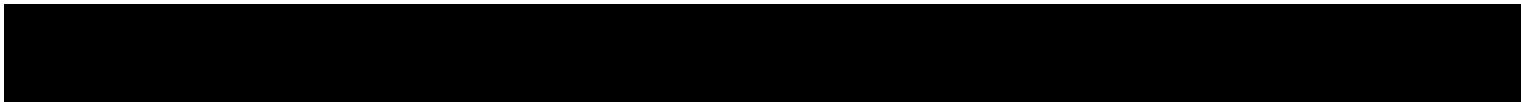
Staff reports and background materials (for agenda items)

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Must be made available to the public upon request (no delay) unless exempt from disclosure under the Public Records Act.

Must be available for public inspection at the meeting

Documents submitted by public must be available for public inspection after the meeting



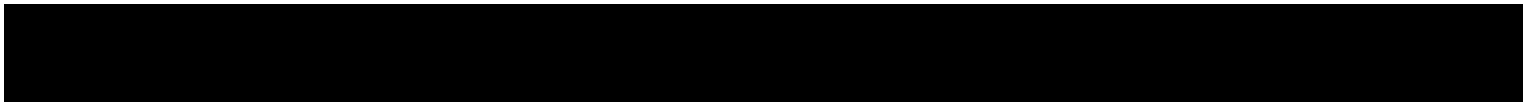
Meetings are Open and Public

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All meetings are open to the public

All votes are open; no secret ballots

ADA compliant



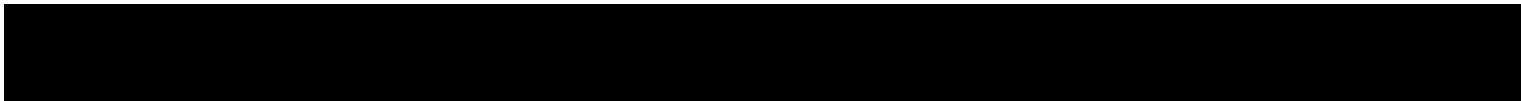
Meetings are Open and Public

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Cannot require those attending to register their names or provide other information as a condition of attending meeting

Can provide a voluntary sign-in sheet, as long as the sheet clearly notes that it is voluntary, and that persons may attend whether he or she signs or not

If attendees are required to sign into a guard station when entering the building, guards cannot provide list to Commission members



Meetings are Open and Public

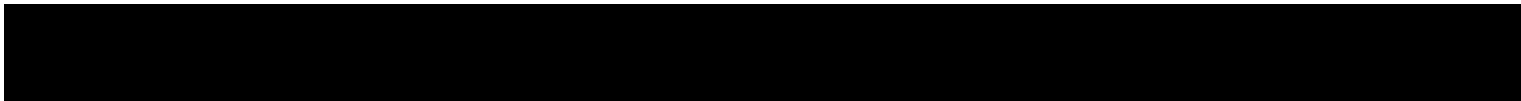
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Right to record the meeting with an audio or video tape recorder or stenographer, or take photographs, unless

- reasonable finding by the Commission that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings

Right to broadcast open and public meetings, unless:

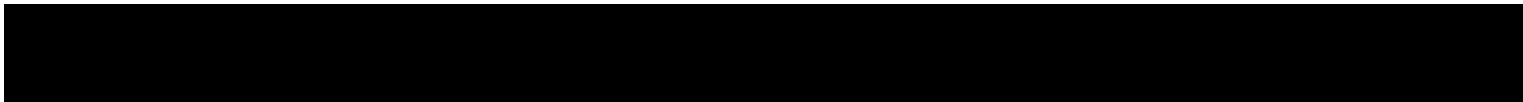
- Reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.



The Commission must take public comments on agenda items

- Before or during Commission discussion
 - Must allow critical comments
- Time allowed
 - Reasonable regulations may be adopted
 - Per speaker
 - Overall time allowed

Can (but not required to) also accept general public comments on issues under Commission's jurisdiction



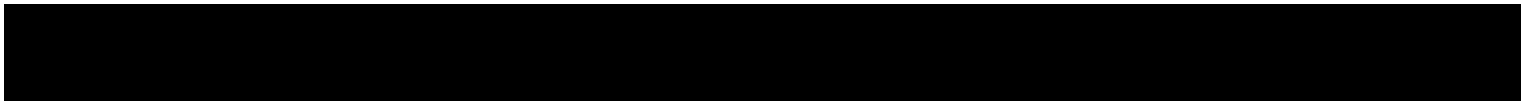
Commission Discussions on Items not on Agenda

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Response to Public Comment on Items Not on Agenda

- May make a brief response to statements or questions permitted, but no discussion or action
- May ask questions for clarification
- May refer the matter to staff for:
 - Information
 - Request to report back
 - Direct to place matter on a future agenda

May briefly announce or report on member's own activities



Items must be listed on regular agenda and properly noticed

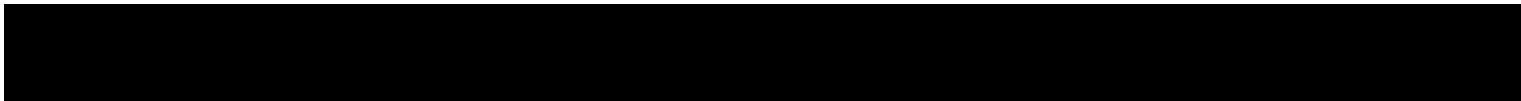
- Agenda should cite the statutory authority for the closed session

Before convening into closed session:

- Commission must announce the issues that will be considered - can be done by referencing the item listed on the agenda.
- On Fund-specific exemptions, Commission must provide public opportunity to speak on whether it is appropriate to go into closed session.

After completing closed session, Commission must reconvene in public

- No report on action taken, unless Commission hires or fires



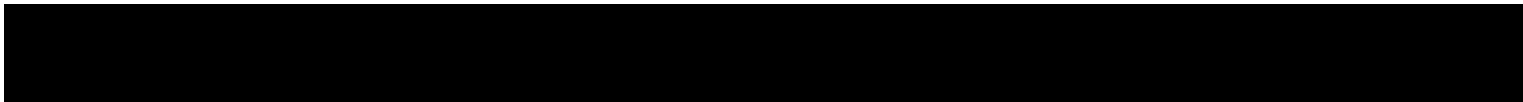
Closed Sessions

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Should only be attended by Commission and persons who are directly involved in the closed session as part of their official duties

Must keep minutes of the closed sessions

- Confidential, disclosable only to the Commission or to a reviewing court

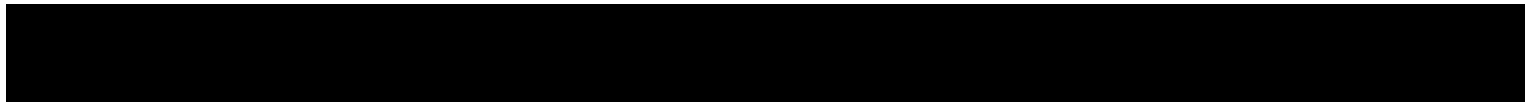


Closed Session – Real Estate

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To advise the Commission's negotiator in situations involving real estate transactions and in negotiations regarding price and terms of payment

Must identify the specific parcel in question and the party with whom negotiating



Closed Session –Pending Litigation

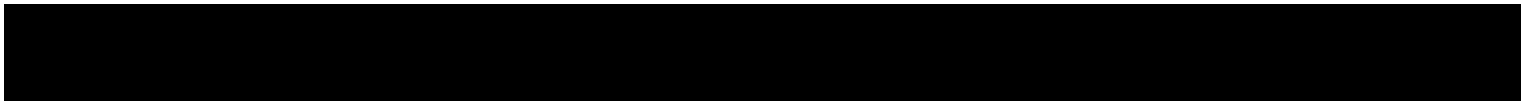
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“Litigation” includes adjudicatory proceedings held in either judicial or administrative forums

Litigation is “pending” where:

- The Fair is a party to existing litigation;
- Under existing facts and circumstances, the Fair has substantial exposure to litigation; or
- Commission will discuss whether to initiate litigation

Attorney must be present during entire closed session discussion of the pending litigation.

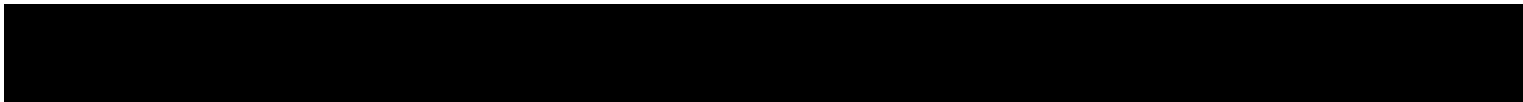


Closed Session – Pending Litigation

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Closed session may be used to:

- Hear advice from counsel
- Make litigation decisions (filing or responding to an action, strategy, settlement terms, etc.)
- Counsel for the Commission must prepare and submit a memorandum stating the specific reasons and legal authority for the closed session

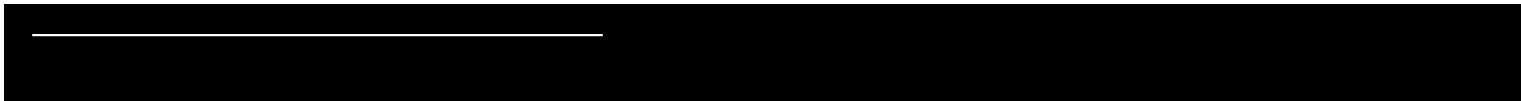


Closed Session – Pending Litigation

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All other attorney-client communications must either be accomplished in open session or through a written privileged communication by counsel to the Commission members.

- If topic is not one of three topics eligible for closed session discussion, Commission members may discuss legal advice in open session only
- Reference to, and some discussion of, confidential attorney-client privileged communication in open session should not constitute waiver of attorney-client privilege



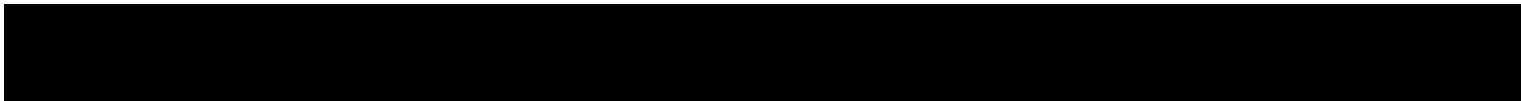
Closed Session –Personnel Exception

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Does not apply to issues Commission members may have with each other

Appointments, employment, evaluation of performance, discipline or dismissal, hear charges or complaints about an employee's actions

- Applies to employees and the President
- Compensation discussions should be held in open session

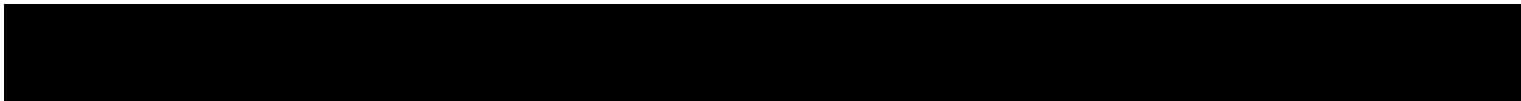


Legal action to void Commission Action

- Can be filed by any interested person
- Must be filed within 90 days of the decision or action that allegedly violated the Act
- Common allegations:
 - Serial meeting
 - Unauthorized closed session
 - Improperly noticed meeting
- Commission can cure and correct alleged violations during litigation

Court cannot void certain actions:

- An action in connection with the issuance of notes, bonds or other indebtedness
- An action that resulted in a contract where other party has detrimental reliance
- Action in connection with the collection of taxes
- Where there has been substantial compliance with the requirements of the Act



Acknowledgement

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